

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 MUR 6042) **CASE CLOSURE UNDER THE**
 PAT ROBERTS) **ENFORCEMENT PRIORITY SYSTEM**
 PAT ROBERTS FOR US SENATE INC.)
 AND ROBERT A. PARRISH, IN HIS)
 OFFICIAL CAPACITY AS)
 TREASURER.)

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated

are forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters compared to other higher rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.

The Office of General Counsel scored MUR 6042 as a low-rated matter. In this case, the complainant, Mike Gaughan, executive director of the Kansas Democratic Party, alleges that Pat Roberts, Pat Roberts for U.S. Senate Inc. ("Committee"), and Robert A. Parrish, in his official capacity as treasurer (referred to collectively as "Respondents") violated the "Stand by Your Ad" requirements under 11 C.F.R. § 110.11(c)(3)(ii) and (iii). These provisions require an audio statement by the candidate that identifies the candidate and that he or she approves the message accompanied by either an "unobscured, full-screen view" of the candidate or a picture of the candidate that is at least 80% of the screen height, as well as a similar statement that must appear clearly in writing at the end of the television communication. 11 C.F.R. § 110.11(c)(3)(ii), (iii). The complaint alleges that the

respondents' advertisement does not conform to these requirements, because Mr. Roberts's image is purposely obscured at the beginning of the advertisement and the written disclaimer is placed at the beginning, rather than the end, of the advertisement and does not state that Mr. Roberts approved the communication.

The Committee responded that the advertisement begins with an oral "stand by your ad" disclaimer and, therefore, complies with 11 C.F.R. § 110.11(c)(3)(ii), because the regulation does not require the oral disclaimer appear at the end of the advertisement. Moreover, the Committee responded that in addition to the oral disclaimer, the advertisement includes "a clearly-identifiable video image of Senator Pat Roberts" pursuant to 11 C.F.R. § 110.11(c)(3)(ii)(B). In response to the allegation that the image was "purposely obscured," the Committee maintained that the image was "plainly visible, quite large, and easily identifiable," and that committees regularly feature candidates shaking hands with voters and/or speaking to an audience. Lastly, the Committee acknowledges that it included the written disclaimer at the beginning of the advertisement rather than at the end, as required by the regulation. See 11 C.F.R. § 110.11(c)(3)(iii) (stating "A communication transmitted through television . . . must also include a similar statement that must appear in clearly readable writing at the end of the television communication."). The Committee then stated it will place the written disclaimer at the end of future television advertisements.

Due to the technical nature of the alleged disclaimer violations and the apparent substantial compliance by the respondents, and in furtherance of the Commission's priorities and resources, relative to other matters pending on the Enforcement docket, the Office of General Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss the matter. See *Heckler v. Chaney*, 470 U.S. 821 (1985).


RECOMMENDATION

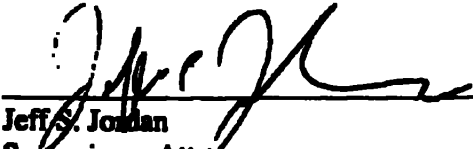
The Office of General Counsel recommends that the Commission dismiss
MUR 6042, close the file, and approve the appropriate letters.

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1/26/09
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